Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1997

IN RE WILLIAM HOPE,

Petitioner,

PETITION FOR WRIT OF HABEAS CORPUS

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38 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

1. Whether newly discovered evidence which establishes that the defendant was sentenced to six times the proper sentence should result in his immediate release from incarceration.

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Judgment, Opinion and Orders Below.....2

Jurisdiction 2

Statement of Reason for not Making Application to the District Court..2

Statement of the Case 3

Reasons for Granting Writ 10

Appendix 25

TABLE OF AUTHORITIES
Cases

Page

Embry v. Hershberger (8th Cir. 1997), 106 F.3d 805 ...17, 18, 21

Engle v. Isaac, 456 U.S. 107, 135, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982).....17

Felker v. Turpin (1996), 116 S.Ct. 2333, 2337.....19

Flynt v. Ohio (1981), 451 U.S. 619, 620.....20

Hope v. U.S. (1997),108 F.3d 119 .9, 14, 22

Hope v. U.S., 43 F.3d 1140 (7th Cir. 1994), cert. denied, 115 S.Ct. 2558 (1995) 8

Mills v. Jordan (7th Cir. 1992), 979 F.2d 1273, 1278 16

Parr v. U.S. (1956), 351 U.S. 513,518....20

People v. Carmelo Mason, P.C. 75-1754 (Judge McBride Presiding) 7

People v. Mason, No. 78478 (1995).....8

People v. Mason, No. 92-1459 (1994).....7

Sawyer v. Whitley (1992), 505 U.S. 333, 339, 112 S.Ct. 2514, 120 L.Ed.2d 269.....16

U.S. v. Hope, 92 C 6654, (1993) (Judge Marovich Presiding) 8

U.S. v. Hope, 906 F.2d 254 (7th Cir. 1990), cert. denied, 499 U.S. 983 (1991).....7

Statutes

18 U.S.C. §922(g)(1) 5, 10, 23

18 U.S.C. §924(e).....5, 7, 10, 19, 23

28 U.S.C. §2241 .....1, 2

28 U.S.C. §2255 ....1, 2, 8, 9, 12, 13, 14, 17, 21

Ill. Rev. Stat. Ch. 91 1/2 Sec. 120 3

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1997

IN RE WILLIAM HOPE,)
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Petitioner,)
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PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, William Hope, petitions this Honorable Court, pursuant to 28 U.S.C. §2241 and 28 U.S.C. §2255, for the issuance of a Writ of Habeas Corpus. In support thereof, petitioner states as follows:

JUDGMENT OPINION AND ORDERS BELOW

The opinion of the Court of Appeals for the Seventh Circuit, denying the petitioner's application for permission to file a successive Petition for Writ of Habeas Corpus in the District Court under 28 U.S.C. §2255, is attached hereto as Appendix A. The opinion is reported at 108 F.3d 119 (7th Cir. 1997).

JURISDICTIONAL STATEMENT

Jurisdiction to file an original Habeas Corpus Petition in this Honorable Court is invoked under 28 U.S.C. § 2241 and 28 U.S.C. §2255.

STATEMENT OF REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT

As required by Rule 20.4(a) of this Court, the petitioner states that he is not making an application to the United States District Court of the district in which he is

being held because the Circuit Court prohibited such an application pursuant to its order of February 20, 1997. As will be shown below, exceptional circumstances warrant the exercise of this Court's discretionary powers in this case, and adequate relief cannot be obtained in any other form or from any other court.

STATEMENT OF THE CASE

1. In 1975, the petitioner was charged in the Circuit Court of Cook County, Illinois, with the offense of burglary.

2. On November 21, 1975, the petitioner entered into a plea agreement on the burglary charge. The agreement was entered pursuant to the Dangerous Drug Abuse Act, Illinois Revised Statutes, Chapter 91 1/2, Section 120. The terms of the agreement provided that the petitioner was

to complete a drug addiction program at a facility called the Gateway House. A sentence of three to nine years in prison was withheld.

3. However, neither the petitioner's lawyer nor the trial judge realized that because the petitioner was on parole at the time, he could not be placed in a treatment program unless parole authorities gave prior permission to do so. No such permission was obtained.

4. After the petitioner had moved into the Gateway House, the parole authorities came, seized the petitioner, and returned him to the penitentiary. Petitioner was returned to the penitentiary as a parole violator, not on a sentence imposed for the 1975 offense.

5. Almost twelve years later, on September 3, 1987, the petitioner was

stopped in his vehicle by members of the Chicago Police Department. The vehicle was searched by police and the officers retrieved a .38 caliber revolver.

6. Although the petitioner was initially charged with an offense in the Circuit Court of Cook County, Illinois, the State charges were dismissed. Petitioner was subsequently charged with unlawfully possessing a firearm as a convicted felon in violation of 18 U.S.C. §922(g)(1).

7. On September 9, 1988, following a jury trial, the petitioner was convicted of the federal offense.

8. At sentencing, the government sought an enhanced penalty for the petitioner under the Armed Career Criminal provision of 18 U.S.C. §924(e) on grounds that the petitioner had three prior felony convictions.

9. For purposes of enhancement, the government introduced evidence of the 1975 burglary offense as one of the three purported felony convictions.

10. At the sentencing hearing, the government presented a document, prepared by the Clerk of the Circuit Court of Cook County in 1987 entitled "Certified Statement of Conviction." The government offered this document as evidence that the 1975 offense resulted in a conviction. (Appendix B).

11. On the basis of the evidence presented, the U.S. District Court found the petitioner eligible for sentence enhancement. The court accepted the 1975 burglary offense as a prior "conviction." The Court then sentenced the petitioner to serve 30 years imprisonment in a federal penitentiary.

12. Had the petitioner not been found to be eligible for enhancement under 18 U.S.C. §924(e), the maximum sentence for the offense he was convicted of was 5 years imprisonment.

13. The petitioner's conviction and sentence were affirmed on direct appeal. United States v. Hope, 906 F.2d 254 (7th Cir. 1990), cert. denied, 499 U.S. 983 (1991).

14. Defendant then sought post-conviction relief in the State court to vacate the 1975 "conviction." The Cook County Circuit Court denied the petition in 1992. People v. Carmelo Mason, P.C. 75-1754 (Judge McBride Presiding). The Illinois Appellate Court, First District, then affirmed the Circuit Court's ruling denying the petition. People v. Mason, No. 92-1459 (1994), and the Illinois Supreme Court

denied leave to appeal in April of 1995. People v. Mason, No. 78478 (1995).

15. Defendant filed his first habeas petition under 28 U.S.C. §2255 but was denied relief by the U.S. District Court. U.S. v. Hope, 92 C 6654 (1993)(Judge Marovich Presiding). A direct appeal from the district court's decision denying the habeas motion was unsuccessful. William Hope v. United States, 43 F.3d 1140 (7th Cir. 1994), cert. denied, 115 S.Ct. 2558 (1995).

16. On January 21, 1997, the petitioner filed a Motion for an Order Authorizing the District Court to Consider a Second Application for Relief Pursuant to 28 U.S.C. §2255 in the U.S. Court of Appeals for the Seventh Circuit on the basis of the newly discovered evidence pertaining to the 1975 offense.

17. The Court of Appeals concluded that, pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, a successive motion under 2255 may not be filed on the basis of newly discovered evidence unless the motion challenges the conviction and not merely the sentence. Therefore, the Court denied the petitioner permission to file a successive 2255 petition. Hope v. U.S. (1997), 108 F.3d 119.

REASONS FOR GRANTING WRIT

PETITIONER HAS DISCOVERED NEW EVIDENCE WHICH ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT HE WAS OBJECTIVELY INELIGIBLE TO RECEIVE A THIRTY YEAR ENHANCED SENTENCE AND PETITIONER REMAINS INCARCERATED IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA

The petitioner is serving an enhanced thirty year sentence after having been convicted of unlawful possession of a firearm that had previously traveled in interstate commerce, in violation of 18 U.S.C. §922(g)(1). Had his sentence not been enhanced pursuant to the Armed Career Criminal Act, 18 U.S.C. §924(e), the maximum sentence for the offense which he was convicted of was 5 years imprisonment.

The petitioner has discovered entirely new evidence which establishes that he did not receive a conviction for the 1975 offense, making him ineligible to receive an

enhanced sentence. The Clerk of the Circuit Court of Cook County has, on its own volition, corrected its records to accurately reflect the disposition of the petitioner's 1975 burglary case. The Certified Statement of Conviction that was used to enhance the petitioner's sentence has been withdrawn by the Clerk and replaced with a "Certified Statement of Disposition." (Appendix C). This Certified Statement of Disposition confirms that the 1975 offense did not result in a conviction. Instead, a sentence of 3 to 9 years imprisonment was withheld. (Appendix C).

This newly discovered evidence directly contradicts the one key piece of evidence presented by the government to support the proposition that petitioner received a conviction for the 1975 burglary offense. The new evidence is proof that

the document the District Court considered in finding the defendant eligible for an enhanced sentence was an inaccurate document. This new evidence has never been reviewed by any other court. The petitioner has not presented evidence of the Certified Statement of Disposition in any prior appeal, motion, petition or other pleading, with the exception of his Motion for Leave to file a Second Habeas Petition Pursuant to 28 U.S.C. §2255. The petitioner could not previously have presented this evidence because the evidence did not exist. The Clerk of the Circuit Court of Cook County did not correct its records until October 10, 1996. Furthermore, the Honorable Louis B. Garripo, who presided over the 1975 proceeding, has provided a new affidavit which squarely addresses the issue. He states in his affidavit that the

"Certificate of Conviction" presented to the District Court in 1987 was incorrect and that no judgment was entered on the case. (Appendix D). This affidavit, like the Certified Statement of Disposition, has never been reviewed by any other court.

Immediately upon learning of this newly discovered evidence, the petitioner proceeded to file a Motion for an Order Authorizing the District Court to Consider a Second Application for Relief Pursuant to 28 U.S.C. §2255 in the U.S. Court of Appeals for the Seventh Circuit. The basis of the motion was that this newly discovered evidence proves that the petitioner was improperly sentenced as a result of a document that was subsequently withdrawn and replaced. The Court of Appeals did not decide the merits of whether this document

proves that the petitioner's sentence was improperly enhanced. The Court concluded that under the narrow confines of the newly enacted Antiterrorisim and Effective Death Penalty Act, a successive motion under 28 U.S.C. §2255 may not be filed on the basis of newly discovered evidence, unless the motion challenges the conviction and not merely the sentence. Hope v. U.S. (1997), 108 F.3d 119, 120. The Court reasoned that the language of the Act, which states that the newly discovered evidence must be sufficient to establish that "no reasonable fact finder would have found the movant guilty of the offense" of which he had been convicted, should be interpreted literally. Id. Thus, because the newly discovered evidence presented by petitioner establishes a sentencing error and not an error affecting guilt, the Court determined that

the motion did not fit within the narrow confines of the new Antiterrorisim and Effective Death Penalty Act.

The Court of Appeals' ruling leaves the petitioner with one last opportunity to have this new evidence reviewed by a court of competent jurisdiction: The Supreme Court of the United States. This Honorable Court should grant William Hope's Petition for Writ of Habeas Corpus. This case involves exceptional circumstances in the discovery of new evidence affecting the continued incarceration of a federal prisoner. Relief can not be obtained in any other form or from any other court. William Hope has exhausted all other avenues for relief.

Petitioner can demonstrate through this new evidence that he is actually innocent of the sentence he received because he was objectively ineligible for the

enhanced sentence imposed by the District Court. The ends of justice require that this Court review the merits of this petition. In Sawyer v. Whitley, this Court established a test which requires courts to analyze whether the petitioner would have been "eligible" for the sentence received if the claimed constitutional violation had not occurred. Sawyer v. Whitley (1992), 505 U.S. 333, 339, 112 S.Ct. 2514, 120 L.Ed.2d 269. To obtain the benefit of the actual innocence exception, a petitioner is required to show that he is actually innocent of the sentence he is challenging. Id. The actual innocence exception has been held to apply in non-capital habitual offender proceedings. Mills v. Jordan (7th Cir. 1992), 979 F.2d 1273, 1278. Moreover, this Court has consistently reiterated that the Great Writ, guided by its statutory and

judicial limitations, is the appropriate mechanism for "correcting a fundamentally unjust incarceration." Engle v. Isaac, 456 U.S. 107, 135, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982). Requiring a person to serve a thirty year sentence which he was not eligible to receive, epitomizes a fundamentally unjust incarceration. William Hope has already served more time in prison than the maximum sentence he could have received if his sentence had not been enhanced.

In a similar case, Embry v. Hershberger (8th Cir. 1997), 106 F.3d 805, the defendant, a federal prisoner, challenged his consecutive 20 year sentences in a successive Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2255. His petition raised only a sentencing error and not an error affecting guilt or innocence.

The District Court dismissed the habeas petition as a successive petition and the defendant appealed. Embry, 106 F.3d at 806. The Court of Appeals considered the merits of the petition, applied the ends of justice test and concluded that the defendant was not eligible for the consecutive sentence of twenty years under the federal kidnapping act. Embry, 106 F.3d at 811. Thus, the court granted the defendant's Petition for Writ of Habeas Corpus and remanded the case with directions to vacate the consecutive 20 year sentence. Embry, 106 F.3d at 811.

Obviously, Embry was not decided by this Court, but rather on appeal from the District Court's denial of a Petition for Writ of Habeas Corpus. Furthermore, the appeal was governed by the law in effect prior to the enactment of the Antiterrorism

and Effective Death Penalty Act of 1996. The petitioner in this case has been prohibited from filing a successive habeas petition in the District Court pursuant to the Court of Appeals' interpretation of the Antiterrorism and Effective Death Penalty Act of 1996. Nevertheless, the Act doe not deprive the Supreme Court of its jurisdiction to entertain original habeas petitions. Felker v. Turpin (1996), 116 S.Ct. 2333, 2337. The narrow confines of the Act as interpreted by the Circuit Court would be inapplicable to this Court's jurisdiction to review this petition. As such, this Court should consider the merits of petitioner's Writ of Habeas Corpus and grant him relief.

Petitioner's newly discovered evidence demonstrates that his sentence was improperly enhanced pursuant to the provisions of 18 U.S.C. §924(e). The

sentence was improperly enhanced because petitioner did not have the three prior felony convictions that the government alleged he did. The new evidence of the Certified Statement of Disposition is proof that the petitioner did not receive a criminal conviction for the 1975 offense. Furthermore, finality in a criminal prosecution is generally defined by the imposition of the sentence. Flynt v. Ohio (1981), 451 U.S. 619, 620; Parr v. U.S. (1956), 351 U.S. 513, 518. The penitentiary sentence for the 1975 burglary offense was never imposed. The new evidence clearly shows that the three-to-nine-year sentence was withheld and the petitioner never did serve a penitentiary sentence for the 1975 offense. Thus, there was no finality in the criminal prosecution and no conviction.

Like the defendant in Embry, the petitioner was not eligible to receive the sentence he is now serving. The new evidence petitioner presents is proof that the document offered by the government at the petitioner's sentencing as evidence of a prior "conviction," was absolutely incorrect. The document has been withdrawn and replaced with an entirely different document which shows no conviction. No court has ever reviewed this new evidence, and no court will likely be able to do so unless this Honorable Court grants this petition. The U.S. Court of Appeals has already refused to allow the filing of a successive Motion under §2255, thus preventing the review of this new evidence by the U.S. District Court.

Moreover, it appears that the Circuit Court may have misunderstood the manner in

which Hope's sentence was imposed. The Circuit Court stated that "When we consider how limited the review of sentencing traditionally was, how strongly Congress evidently disfavors successive rounds of collateral attacks on duly reviewed convictions such as that of Hope, how doubtful it is that any violation of the **sentencing guidelines** rises to the level necessary to justify collateral relief even under the standards of the old law, (Citation), and the absence of any indication in the legislative history that 'offense' was being used in some special sense different from its ordinary meaning, we think it highly unlikely that Congress intended the word to bear a special meaning." Hope, 108 F. 3d. 119, 120. (emphasis added). Clearly, William Hope was not sentenced under the sentencing

guidelines, as is suggested by the Court's opinion. Rather, Hope was sentenced under 18 U.S.C. §924(e). The issue in this case is not whether Hope's sentence was a violation of the guidelines because the guidelines did not apply. Instead, the issue is whether Hope's sentence was properly enhanced under 18 U.S.C. §924(e). Through the newly discovered evidence the petitioner now presents, he can establish that his sentence was wrongfully enhanced pursuant to 18 U.S.C. §924(e).

William Hope has already served more time in the federal penitentiary than the maximum sentence authorized for the offense of which he was convicted. Without a 1975 felony conviction, which Hope can now show was truly not a conviction, the maximum sentence for a violation of 18 U.S.C. §922(g)(1) was five years. William Hope has

already served more than nine years of his thirty year sentence.

CONCLUSION

Wherefore, the petitioner, William Hope, respectfully requests that this Honorable Court grant a Writ of Habeas Corpus and thereafter vacate the petitioner's sentence and grant such other relief as this Court deems just.

Respectfully Submitted,

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APPENDIX

APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 97-8011

WILLIAM HOPE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Motion for an Order Authorizing the District Court to Entertain a Second or Successive Petition for Collateral Review

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SUBMITTED FEBRUARY 7, 1997—DECIDED FEBRUARY 20, 1997*
OPINION FEBRUARY 28, 1997

Before POSNER, *Chief Judge*, and MANION and KANNE, *Circuit Judges*.

POSNER, *Chief Judge*. After William Hope was convicted of federal crimes and his conviction affirmed in *United States v. Hope*, 906 F.2d 254 (7th Cir. 1990), he

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* The opinion was originally released in typescript in order to ensure compliance with the deadline in 28 U.S.C. § 2244(b)(3)(D) for ruling on applications for permission to file second or successive motions for federal collateral review of state or federal convictions. Although the section refers only to habeas corpus for state prisoners, the last paragraph of section 2255 incorporates it by reference with regard to motions by federal prisoners under section 2255, the habeas corpus substitute for such prisoners.

sought to vacate his sentence under 28 U.S.C. § 2255, the federal prisoner's substitute for habeas corpus. His motion was denied and the denial affirmed. *Hope v. United States*, 43 F.3d 1140 (7th Cir. 1994). He now seeks our permission to file, on the basis of newly discovered evidence, a second 2255 motion, which under the recent amendments made to the statute by the Antiterrorism and Effective Death Penalty Act of 1996 he may do only if the evidence would enable him to show that "no reasonable factfinder would have found the movant guilty of the offense" of which he had been convicted. The only nonfrivolous issue that the proposed motion presents, however, is whether Hope's sentence was properly enhanced on the basis of his being a career criminal. The motion (more precisely the nonfrivolous part of the motion, and we ignore the rest) thus assumes that he was guilty of the offense of which he was convicted. His only quarrel is with the sentence, and thus the motion does not fit within the narrow confines of the amended statute, at least if it is interpreted literally.

Should it be interpreted literally? Courts that before the amendment had to decide whether an application for postconviction relief came within the "actual innocence" exception to the requirement of proving cause and prejudice in order to be permitted to revive a waived ground for relief extended the exception to sentencing issues, e.g., *Sawyer v. Whitley*, 505 U.S. 333, 340-41 (1992); *Callins v. Johnson*, 89 F.3d 210, 214 (5th Cir. 1996)—and (at least in this circuit) not only in capital cases. *Mills v. Jordan*, 979 F.2d 1273, 1278 (7th Cir. 1992); contra, *Reid v. Oklahoma*, 101 F.3d 628, 630 (10th Cir. 1996). But we do not think the exception survives the amendment. The "actual innocence" exception of the prior law was judge-made, and so its contours were appropriately judge-fashioned and permissibly judge-expanded. The exception in the new law is graven in statutory language that could not be any clearer. When we consider how limited the review of sentencing traditionally was, how strongly Congress evidently disfavors successive rounds of collateral

attacks on duly reviewed convictions such as that of Hope, how doubtful it is that any violation of the sentencing guidelines rises to the level necessary to justify collateral relief even under the standards of the old law, *Scott v. United States*, 997 F.2d 340 (7th Cir. 1993), and the absence of any indication in the legislative history that "offense" was being used in some special sense different from its ordinary meaning, we think it highly unlikely that Congress intended the word to bear a special meaning. The same conclusion has been reached by the only other appellate court to have addressed the issue in a published opinion. *Greenawalt v. Stewart*, 1997 WL 27116, at *11, 1997 WL 33548, at *1 (9th Cir. Jan. 17, 22, 1997) (per curiam).

We conclude that a successive motion under 28 U.S.C. § 2255 (and presumably a successive petition for habeas corpus under section 2254, governing habeas corpus for state prisoners, which has materially identical language) may not be filed on the basis of newly discovered evidence unless the motion challenges the conviction and not merely the sentence. Hope's application for permission to file a successive 2255 motion is therefore

DENIED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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APPENDIX B

9-811 Crim. Div. No. 93

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

vs.

Carmelo Mason a/k/a William E. Hose

GENERAL NO. 75-1754

GOVERNMENT EXHIBIT 2-A

CERTIFIED STATEMENT OF CONVICTION

I, Morgan M. Finley, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the records of the Circuit Court of Cook County show that:

1. ☐ On 3-10-75 (date) the duly impanelled Cook County Grand Jury for Extended February 75 19.... returned an indictment, number 75-1754 charging the above named defendant with Burglary, Etc. (offense)

☐ On ..... (date) pursuant to statutory authorization, the State's Attorney of Cook County filed an information number ..... charging the above named defendant with ..... (offense)

2. On 4-4-75 (date) the above named defendant, while represented by counsel, was duly arraigned before the Honorable Richard J. Fitzgerald of the Circuit Court of Cook County and entered a plea of not guilty to the offense.

3. ☐ A jury was impanelled and thereafter returned against the defendant who was represented by counsel, a verdict of guilty of ..... (offense) on ..... 19....

☐ A trial by jury was waived by the defendant, who was represented by counsel and thereafter the Court found the defendant guilty of ..... (offense) on ..... 19....

☐ The defendant, after having been fully advised of his rights, and while represented by counsel, withdrew his plea of not guilty and entered a plea of guilty to Burglary (offense) on 11-21 19 75

4. on 11-21-75 (date) judgment was entered on the conviction and the defendant was sentenced by the Honorable Louis Garippo to Illinois Department of Corrections for a term of not less than three (3) years, nor more than nine (9) years.

defendant sentenced to the Drug Abuse Treatment Center Gateway House.

I hereby certify that the foregoing has been entered of record on the above captioned case.

Date: December 17 19 77

Morgan M. Finley

Application
Judge's and Clerk's Certificate — 18-811 Form: Crim. Div. No. 77

STATE OF ILLINOIS
County of Cook } ss.

I, Richard J. Fitzgerald, Judge of the Circuit Court of Cook County, Illinois and Presiding Judge of the Criminal Division, County Department, in said State, do hereby certify that MORGAN M. FINLEY, whose name is subscribed to the above certificate of attestation, now is, and was, at the time of the signing and sealing the same, the Clerk of the Circuit Court of Cook County, Illinois; and keeper of the Records and Seal thereof, duly elected, commissioned and qualified to office; that full faith and credit are, and of right ought to be, attached to all his official acts, as such, in all Courts of Record in the United States and elsewhere, and, further, that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, Illinois.

December 17, 1937

(SEAL)

Judge of the Circuit Court of Cook County and
Presiding Judge of the Criminal Division of Cook County, Illinois

UNITED STATES OF AMERICA

STATE OF ILLINOIS
County of Cook } ss.

I, MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois, in said County and State, do hereby certify that Honorable Richard J. Fitzgerald whose name is subscribed to the foregoing certificate of attestation, now is, and was, at the time of signing and sealing the same, a Judge of said Circuit Court of Cook County; and Presiding Judge of the Criminal Division, County Department, and was duly elected, commissioned and qualified to office; that full faith and credit are, and of right ought to be, given to all his official acts as such, in all Courts of Record in the United States and elsewhere and that his attestation is in due form of law and by the proper officer.

Given under my hand and seal of said Court at Chicago, in said County, this

December 17, 1937

Morgan M. Finley

Clerk of the Circuit Court of Cook County, Illinois

APPENDIX C

CCMC 1 363-6056

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
or
CITY or VILLAGE of _____

vs — NO. 75 C 1754

CARMELO MASON (a.k.a. William Hope)

CERTIFIED STATEMENT OF DISPOSITION

I AURELIA PUCINSKI, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and the seal thereof do hereby certify the records of the Circuit Court of Cook County reflect that:

1. On March 10, 1975 a complaint was filed charging the defendant with the offense of Burglary, etc.

2. On November 21, 1975 the aforementioned cause was held for a hearing before Honorable Judge Garippo, a judge of the Circuit Court of Cook County, and the defendant, while represented by counsel, was arraigned and entered a plea of guilty [redacted] and waived his/her right to trial by jury.

3. On November 21, 1975 the Honorable Judge Garippo, a judge of the Circuit Court of Cook County, sentenced the defendant to a period of 1 to 9 years, withheld on the [redacted] condition [redacted] the defendant [redacted] complete drug abuse program.

I hereby certify that the foregoing has been entered of record on the above captioned case.

Dated OCTOBER 10, 19 96

Aurelia Pucinski

AURELIA PUCINSKI
Clerk of the Circuit Court of Cook County

BY: DESIREA / DEPUTY CLERK

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

APPENDIX D

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

I, LOUIS B. GARIPPO, being first duly sworn on oath, depose and state as follows:

1. I was the Judge in the Circuit Court of Cook County in the case of People v. Carmelo Mason, Ind. No. 75-1754.

2. I base my affidavit on my reading of the transcript of proceedings and the half sheet in People v. Carmelo Mason, Ind. No. 75-1754.

3. The case was heard before me on the 21st day of November, 1975.

4. There was a plea agreement. The plea involved the defendant entering a plea of guilty, requesting treatment under Chapter 91-1/2, Section 120, with the understanding that defendant was to go to Gateway House, and that if he did not intentionally violate the conditions of Gateway House, no judgment on a conviction would be entered against him. It was further understood that if he did violate the conditions, he would be brought back to court and then a conviction would be entered and he would be sentenced to a period of three to nine years. By withholding judgment no sentence ever was imposed. This procedure was consistent with procedures followed in my courtroom in 1975.

5. Additionally, the half-sheet does not indicate that the defendant was ever returned to court for imposition of the sentence.

6. The "Certification of Conviction" attached as Exhibit A is incorrect. That certificate indicates that on November 21, 1975, a judgment was entered on a conviction.

No such judgment on a conviction was entered on that date and the half-sheet shows no subsequent judgment on a conviction.

FURTHER AFFIANT SAYETH NOT.

LOUIS B. GARIPPO

SUBSCRIBED AND SWORN To

Before Me This 12th Day

of September, 1996.

NOTARY PUBLIC

"OFFICIAL SEAL"
MARY A. DIETMEYER
Notary Public, State of Illinois
My Commission Expires January 11, 1998